

XI. SPECIAL PROVISIONS

	TABLE OF CONTENTS	Page
A.	AMENDED CLAIMS	399
1.	Who May Amend.	399
2.	Contents Of Amendments.	400
3.	Processing Amendments.	402
a.	Amendment Received Before Basin Examination.	402
b.	Amendment Received During Basin Examination	403
c.	Amendment Received After Basin Examination	403
d.	Amendment Received After Decree Issued	404
4.	Examining Amendments	404
B.	IMPLIED CLAIMS	405
1.	What And Why	405
2.	Water Court Authorization Process	405
3.	Generating An Implied Claim	407
4.	Processing Of Implied Claims	409
C.	LATE CLAIMS	410
1.	Receipt Of Late Claims.	410
2.	Initial Processing.	411
3.	Post-Initial Processing	414
a.	Claim Received In A Basin Where Examination Has Not Started	414
b.	Claim Received During Basin Examination	414
c.	Claim Received In A Summary Report Basin Or Decreed Basin	414
4.	Examining Late Claims	414
a.	Claim In Basin Currently Being Examined	414
b.	Claim In A Summary Report Basin	415
c.	Late Claim In A Decreed Basin	415
D.	TRANSFERS	417
1.	Processing Claims With Transfers	417
a.	Total Transfer (100%)	417
b.	Split (or Proportional) Transfer	417
2.	Notification Procedures	418
3.	New Owner Determined But File Lacks Transfer Certificate	421
4.	Extended Claim Identification Numbers	421
E.	TERMINATION OF A CLAIM	422
1.	Request To Withdraw Claim	422
2.	Processing Withdrawn Claims	422
a.	Withdrawals Received Before Or During Basin Examination	422
b.	Withdrawals Received After Basin Examination And Before A Decree	424
c.	Withdrawals Received After A Decree Is Issued	424

TABLE OF CONTENTS (cont.)		<u>Page</u>
3.	Previously Terminated Claims	424
a.	Determining Valid Terminations	425
b.	Processing Properly Terminated Claims	425
c.	Processing Improperly Terminated Claims	425
4.	Decree Abstract Format	425
5.	Reinstatement Of Terminated Claim	427
F.	CHANGE IN APPROPRIATION RIGHT	429
1.	Processing Change Applications (Form 606)	429
2.	Post-'73 Changes To Pre-'73 Rights	432
a.	Post-'73 Changes For Which No 606 Was Filed	432
b.	Post-'73 Changes For Which A 606 Was Filed	432
3.	Examining Claims With Changes	432
a.	Claim Shows The Right As It Was Before 1973 And File Contains A 606	433
b.	Claim Shows Post-'73 Changes And The File Contains A 606	433
c.	Claim Shows Post-'73 Changes, No 606 In File	434
G.	CLAIMS THAT PRESENT SPECIAL ISSUES	435

A. AMENDED CLAIMS

A claim may be amended prior to a decree. Claims should not be amended after a decree is issued; the claimant should contact the water court for instructions concerning changes in claim information.

The following requirements were implemented by the Supreme Court Water Right Claim Examination Rules on July 15, 1987. Any amendments received prior to that date will be acceptable even if they do not contain the requirements in sections A.1. and 2. below.

Amendments are required under the following circumstances, but may be used to change other elements.

- An adjustment by a claimant to a claim not presently being examined.
- An adjustment by a claimant based on information provided by a non-owner (e.g., tenant, ranch manager, Forest Service District employee)
- An adjustment to flow rate, volume, priority date, or acres. Acceptable clarifications to these elements are described in the section on each element.

1. Who May Amend. Amendments received after July 14, 1987 will only be accepted from a current owner of the claim as listed in the department records, or his legally authorized representative. If the current owner does not match the department records, supply the owner with a Form 608, Water Right Transfer Certificate. The amendment cannot be implemented until the Form 608 is received.

Amendments received from persons other than the owner listed in the department records will be added to the claim file but the information will not be entered into the decree or the computer record. Add an issue remark to the department's examination report

Example: A20 AM51AN AMENDMENT WAS SUBMITTED ON 12/08/85 WHICH HAS NOT BEEN IMPLEMENTED. THIS AMENDMENT WAS NOT SUBMITTED BY THE OWNER LISTED IN THE DNRC RECORDS.

Multiple Owners. When a claim was submitted during the filing period with multiple owners, an amendment may be accepted as follows.

If an amendment is submitted by one owner for a claim involving multiple owners (excepting husband and wife), ask the amendor whether the other owners should sign the amendment form. If so, it should be the amendor's responsibility to obtain the needed signatures and return the form. Document this communication.

An alternative is to send copies of the completed amendment form to the other owners (excepting for husband and wife ownerships). Request that they sign the copy and return it. Place

the original and all signed copies in the file. Be sure the copies are clearly marked "COPY" to avoid uncertainty on the film record. Process the amendment whether or not the copies are returned.

If one of the owners protests the amendment in writing, place the amendment and protest in the file but do not have the amendment entered into the computer record. Add the following issue remark to the department's examination report.

Example: A25 AM51AMENDMENT WAS SUBMITTED ON 02/08/87. THE AMENDMENT WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD.

Split Ownerships. When a claim has been subdivided since the filing period, any current owner of record may file the amendment.

When the amendment is submitted by the original owner who filed the claim, ask if the other owners should sign the amendment form. If so, it should be the original owner's responsibility to obtain the needed signatures and return the form. Document this communication.

When the amendment is submitted by someone other than the original owner who filed the claim, send copies of the completed amendment form to the other owners. Request that they sign the copy and return it. Place the original and all signed copies in the file. Be sure the copies are clearly marked "COPY" to avoid uncertainty on the film record. Process the amendment whether or not the copies are returned.

If one of the owners protests the amendment in writing, place the amendment and protest in the file but do not have the amendment entered into the computer record. Add the following issue remark to the department's examination report.

Example: A25 AM51AMENDMENT WAS SUBMITTED 02/08/87. THE AMENDMENT WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD.

2. Contents Of Amendments. Amendments must be submitted in writing either by letter or by using an amendment form (Exhibit XI-1). The water court form (Figure XI-1) may be used when few items are being amended. However, the preferred method for submitting an amendment is to use an amendment form.

All amendments received after July 14, 1987 must contain:

- the date the amendment was received
- ID numbers of the claims being amended (a separate amendment form for each claim is preferred but not required)

FIGURE XI-1
REQUEST TO AMEND STATEMENT OF CLAIM

STATE OF MONTANA

County of _____

I, _____ hereby request the following
amendment(s) to my Statement of Claim, number _____:

The amendment(s) are requested for the following reasons:

Signature date

Signature date

Subscribed and sworn before me this ____ day of _____, 19__.

Notary Seal

Residing at _____

My commission expires _____

- a map. If the POU or POD is amended, request that the claimant attach a map to locate the new POU or POD.
- reasons for the amendment (preferred but not required)
- the notarized signature of at least one current owner listed in the department's records. The notarized signature of a guardian or person with power of attorney is acceptable if supported. It is preferred that all signatories to the claim form, or their successors in interest, sign the amendment.

If proper notarized signatures cannot be obtained, do not have the amendment entered into the computer record. Add the following remark to the department's examination report.

Example: A19 AM51AN AMENDMENT WAS SUBMITTED ON MM/DD/YY REQUESTING TO AMEND THE VOLUME TO 2.00 ACRE-Feet. DNRC REQUESTED A SIGNED AND NOTARIZED AMENDMENT FORM BE SUBMITTED. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN PROPERLY FILED.

The amendment may be supplemented with other maps, letters, copies of documents, etc.

3. Processing Amendments. Processing of amendments depends upon where the particular basin is in the decree process.

a. Amendment Received Before Basin Examination. Review the amendment for clarity of intent and be sure it contains all requisite items. Complete the following steps.

- Stamp the amendment with the date of receipt.
- Stamp all documents with AMENDMENT unless clearly identified by their title.
- Make sure the claim ID number being amended is clearly identified. If amendment is a letter, write claim ID number in upper righthand corner. Add claim ID number to all documents attached to amendment.
- Add an amendment remark to document the amendment. The date in the remark should be the date the amendment was received.

Examples: A5 AM01THE PERIOD OF USE WAS AMENDED BY THE CLAIMANT ON MM/DD/YY.

A15 AM01THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON MM/DD/YY: FLOW RATE, VOLUME, MAXIMUM ACRES, PLACE OF USE.

(Note: Two or more elements can be coded.)

Send the amendment and all attachments to the records section with a short note indicating the amendment should be coded, and the materials microfilmed and stored in the claim file.

Amendments Received Prior To July 15, 1987. These amendments when encountered during examination will be considered acceptable even if they do not contain the requirements in sections A.1. and 2. above. At a minimum, the amendment must be in writing with a claim number reference, signature, and date. Check that the amendment has been properly entered into the computer data base. Add the necessary amendment remark (AM01) to the decree abstract to document the amendment.

b. Amendment Received During Basin Examination.
For amendments received during basin examination, complete the following steps.

- Process the amendment as in section 3.a. above.
- Record the amendment on the worksheet by changing the element as amended. If lengthy amendments occur to POU or POD, cross out the information on the worksheet and reference coders to the amendment.
- To alert the coders, place a check mark in the left hand margin of the worksheet for each amended element.

Amendments received during basin examination should be retained along with other examination materials and sent to the records section when a batch is to be coded. If the amendment drastically alters the information on the worksheet, it may be sent with all attachments to the records section with a note requesting an updated worksheet.

c. Amendment Received After Basin Examination.
Amendments received after a basin is examined will be processed if the amendment will not delay the issuance of the summary report or decree.

- Prior To Summary Report. Notify the program manager to confirm whether the amendment can be incorporated prior to printing. If so, process the amendment as in section 3.a. above and send the amendment to the program manager. The amendment will be coded and the materials along with a review abstract will be returned to the regional office.

If the amendment cannot be incorporated into the summary, the procedures described below will be followed.

- After Summary Report. Contact the program manager to confirm whether the amendment can be incorporated prior to printing the decree. If so, process the amendment as in section 3.a. above and send the amendment to the program manager. The amendment will be coded, and the materials

along with an updated summary report abstract will be microfilmed and returned to the regional office. The updated summary report abstract will also be sent to the water court.

If the amendment cannot be processed for inclusion in the decree, see section 3.d. below.

d. Amendment Received After Decree Issued.

Claimants wishing to amend their claim in a decreed basin should be directed to file an objection. The water court does accept late objections. Only the water court may authorize changes to claims in a decreed basin.

If an amendment is received by the department, send the amendment along with short memorandum to the water court. If the amendment corrects an error in the decree which is confirmed by your review, discuss this in your memorandum. Route the memo and amendment to the program manager for review. The program manager will be responsible for the following:

- microfilm the amendment and memorandum
- add an amendment remark to the computer data base

Example: A26 AM51AN AMENDMENT WAS SUBMITTED ON MM/DD/YY REQUESTING TO AMEND THE POINT OF DIVERSION AND PLACE OF USE. AS THIS IS A DECREED BASIN, THE AMENDMENT HAS NOT BEEN IMPLEMENTED.

- send the memorandum and copy of amendment to the water court
- add the original amendment and copy of memorandum to file

4. Examining Amendments. Amendments will become part of the claim and will be examined using procedures for that element of the claim. Examine the claim with the amended information according to the appropriate procedures for the claim type.

Occasionally an amendment may be submitted that so completely changes the claim that it could be considered a totally different water right from that originally filed. For example, amending an exempt use claim to a non-exempt use or amending a claim to add another use may be a legal issue. Bring these instances to the attention of the program manager for guidance. If it is determined the amendment is still questionable, send a copy of the amendment and claim to the water court with a request for their assistance and recommendation. Use the format of Figure XI-2 with the following title for making the request: "Request for Assistance."

B. IMPLIED CLAIMS

1. What And Why. An "Implied Claim" is a claim authorized by the water court to be separated and individually identified from multiple rights evident in one or more claims.

Each water right should have been filed on a separate claim form. When it appears that a single claim contains more than one right, certain steps will be taken to determine if an implied claim should be generated. Only the water court can authorize the generation of an implied claim.

Evidence of the existence of additional rights may appear on the claim form as multiple priority dates, sources, or purposes. Evidence may also exist in the attached maps and documentation. Usually evidence from the attachments must be fairly strong before considering sending the claim to the water court for review.

Information and data added to the claim file after 4/30/1982 by the claimant or the department which documents a different right may not be valid for generation of an implied claim. In this situation, contact the program manager prior to requesting authorization to generate an implied claim from the water court.

2. Water Court Authorization Process. Whenever a single claim appears to contain more than one right, review the claimant's other claims.

- If the claimed extra right is already on a separate claim, document this on both examination worksheets. Do not proceed further in the implied claim process.
- If there is doubt whether an extra right exists or about it being on another claim, contact the claimant.
 - (i) If the claimant confirms there is no extra right or it is covered by another claim, document this on the claim examination worksheet. This ends the implied claim review of this claim.
 - (ii) If the claimant does not respond to contact, or if the information gained is incomplete or inconclusive, contact the water court.

When it is apparent a single claim contains more than one right, send a Request For Authorization To Create An Implied Claim form (Figure XI-2) and the complete claim file to the water court.

Route the request and claim file through the Helena central office. If uncertain the extra water right is covered by another claim, send both claim files to the water court. When the water master does not authorize an implied claim, put the review request form in the claim file. This ends the implied claim review for this claim.

FIGURE XI-2

(use regional office letterhead)

REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM

TO: Montana Water Court
FROM: Gerald Reddig, Water Resources Specialist
Glasgow Water Resources Regional Office
DATE: August 1, 1993
RE: Claim No. 40S W037631-00

This irrigation claim has two points of diversion. The first diversion is a diversion dam for a water spreading system. The second diversion is a dam and storage reservoir from which the claimant pumps from for his sprinkler system.

The 1910 priority date fits the water spreading system but not the sprinkler system. According to the claimant, water was first pumped from Bear Creek in 1966 to flood irrigate. After trying different types of irrigation, including different types of sprinklers, a pivot system was installed in 1971.

In summary, this claim appears to contain two water rights. One right is for a water spreading system with a 1910 priority date. The other right is for a sprinkler system with a 1966 priority date. The complete file for this claim is enclosed. Please review and determine whether an implied claim should be generated. Thank you for your consideration in this matter.

Enclosure

(For Implied Claims Created Without Water Court Authorization)

REQUEST AUTHORIZATION OF AN IMPLIED CLAIM

TO: Montana Water Court
FROM: Marshall Sewell, Water Resources Specialist
Helena Water Resources Regional Office
DATE: August 1, 1994
RE: Claim No. 41D W092776-00

The above claim was received April 27, 1982, as a timely filed statement of claim. Supporting documentation included notices of appropriation for:

- * 8 cfs - Big Hole River - September 20, 1901
- * 100 miners inches - Mulky Spring - July 3, 1897

According to policy in affect during and shortly after the claim filing period, authorization from the water court to create implied claims was not required. Therefore, on November 22, 1982, during the clarification process, the July 3, 1897 right was separated and implied claim 41D W182268-00 was created.

At this time, I would like to request the water court's approval of implied claim 41D W182268-00. Enclosed for your review are both claim files.

Thank you for attention to this matter.

Enclosures

Implied Claims Generated Without Water Court Authorization.
Policies and procedures in affect during and shortly after the claim filing period allowed the department to generate implied claims without water court authorization.

For any implied claims which do not contain water court authorization and it is confirmed that more than one right is involved, send a Request For Authorization Of An Implied Claim (Figure XI-2) and all claim files to the water court.

3. Generating An Implied Claim. When the water court has authorized an implied claim, transfer the additional rights to a separate claim form. The implied claim will usually be completed by the claimant or according to their direction and authorization. Place the implied claim in labeled file folder. A copy of the Request For Assistance form should be included in both the original and implied claim files.

All items on the claim form should be completed, including the map and documentation. If documentation from the original claim is extensive, reference to the original claim file in the general comments area of the implied claim examination worksheet.

The claimant's notarized signature is preferred but not required. Request filing fees pursuant to \$85-2-225, MCA.

Stamp the implied claim form in the upper right corner with the date the originally filed claim was received. Stamp or write IMPLIED CLAIM at the top of the claim form. Write the date the implied claim is generated on the label described below.

Complete the following items at the top left corner of the claim form. See Figure XI-3 for proper placement of these items.

- claim number (call Records for new numbers)
- basin number
- POD county code
- water court division code
- climatic area code (irrigation claims only)
- filing fee collected, if any, and transmittal number

Attach a label over item 2 (person completing form) on the claim form. This label states the claim has been authorized by the water court and refers to the original claim number. Its format is:

FORM AUTHORIZED BY WATER COURT	
DATE GENERATED:	_____
EXAMINER:	_____
REGIONAL OFFICE:	_____
ORIGINAL CLAIM ID:	_____
REMARKS:	_____

FIGURE XI-3

CLIMATIC AREA CODE _____

DATE CLAIM RECEIVED _____

COUNTY WHERE POINT OF DIVERSION IS _____

WATER RIGHT IDENTIFICATION NUMBER _____

BASIN NUMBER _____

WATER COURT U - UPPER MISSOURI
L - LOWER MISSOURI
Y - YELLOWSTONE
C - CLARK FORK

Form No. 761 R2/80

325800-43D

→ 3-CA-Y ←

→ 3-044 ←

FF = \$40(0,*)

PF = \$150

1. Owner of Water Right _____

Last First Middle Initial

Implied CLAIM
STATEMENT OF CLAIM
FOR EXISTING WATER RIGHTS
IRRIGATION
For the Water Courts of the State of Montana

RECEIVED
JUN 02 1990
DNRC

FILING FEE RECEIVED FOR THIS CLAIM! IF NO FEE IS TO BE APPLIED THEN
0 - no fee received this claim (as with decreed rights)
* - fee maxed out (\$480 paid for filing claims in this water court division)
NOTE: IF VOLUNTARY FILING, SAME SOURCE, ENTER \$20.00 ON EACH CLAIM

PROCESSING FEE RECEIVED FOR THIS CLAIM! (FOR LATE CLAIMS ONLY!!)

FOUR (4) DIGIT ELECTRONIC TRANSMITTAL NUMBER _____

4. Processing Of Implied Claims. Add remarks to both the implied claim and the original claim to reference each other. Add the following remark to the decree abstract of the implied claim.

Example: C5 CI01THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. W000000-00.

Add the following remark to the original claim.

Examples: R15 RM01IMPLIED CLAIM NO. W000000-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

R16 RM01THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. W000000-00, W111111-00, W222222-00.

If a required filing fee is not received, add an issue remark to the department's examination report for all the implied claims involved:

Examples: F15 FI51FILING FEE INSUFFICIENT TO COVER IMPLIED CLAIM. TOTAL AMOUNT DUE \$40.00.

F20 FI51FILING FEE INSUFFICIENT TO COVER IMPLIED CLAIMS. TOTAL AMOUNT DUE \$80.00 FOR CLAIM NOS. W000000-00, W000000-00.

If the water court requests the Department to create an implied claim in a basin which has been decreed, follow the procedures outlined above and add the following general information (GI) remark.

Example: G35 GI51CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED 05/07/85.

Send the implied claim to the records section where it will be microfilmed and entered into the centralized record system. Request that the records section return the claim with an examination worksheet.

Examine the implied claim per policy as outlined in this manual for the type of claim involved.

C. LATE CLAIMS

By definition, a late claim means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under §85-2-226. Based on the definition, a late claim is a Statement Of Claim filed with the department after 5:00 PM, April 30, 1982 which is not exempt under the provisions of §85-2-222. This section applies to late claims and exempt claims filed after April 30, 1982.

Claims not filed by 5:00 PM, April 30, 1982 may be filed with the department through July 1, 1996 on forms provided by the department. To be accepted, a claim must be physically submitted to the department or postmarked in the U.S. mail on or before the July 1, 1996 deadline. Claims physically submitted or postmarked after July 1, 1996 will not be accepted and will be returned.

Note: If a regional office moves before the July 1, 1996 filing deadline, you must seek an arrangement with the post office to have them forward mail until August 1, 1996.

1. Receipt Of Late Claims. When a late claim is received, all items on the claim form should be completed, including the notarized signature. A clearly labeled map and documentation should be supplied. If this information is not complete, request it. If it is not supplied, it will be requested again during the initial processing stage.

Fees. A filing fee and processing fee are required pursuant to §85-2-225, MCA. For further fee instructions, refer to "Claim Examination: Checking For Correct Data Entry: Checking Fee Paid."

Section 85-2-225, MCA limits the filing fee to \$480 (12 claims) per person. "Person" is defined in 85-2-102, MCA. When determining the filing fee required for late claim(s) being submitted, ask the claimant whether they have previously submitted other claims and paid fees; and if so, how much. The request for fees should be based on the answer. If the claimant indicates filing fees have been previously paid, this will need to be confirmed in order to determine the filing fee for the late claims.

Exceptions to the processing fee are exempt claims and claims filed by state agencies.

The policy on filing fees and processing fees for late claims is as follows:

- If the late claim is submitted in-person, a filing fee and processing fee are required. If both fees are not submitted, do not accept the claim.
- If the late claim is submitted by mail, a filing fee and processing are required. If both fees are not submitted, notify the claimant by mail that the fees are due. Do not

assign an I.D. number to the claim. If the fees are not received within thirty (30) days, write across top of claim "Returned For Lack Of Proper Fees" and return the original claim to the claimant with a letter indicating the fees are insufficient. Make a copy of the claim and letter for your file.

If you have a situation where it is unclear whether a filing fee or processing fee is required, error on collecting the fee. If necessary, discuss the situation with the program manager and a legal opinion will be obtained.

Closed Basins. Pursuant to reserved water right compacts ratified by the legislature prior to July 1, 1993 (effective date of SB310 - late claim legislation), certain basins are closed to the filing of late claims. Claimants should not be advised to file late claims in these basins. Basins which are closed pursuant to compacts are as follows:

Basin 42A	Moratorium in effect. This means no late claims could be filed unless DNRC lifts the moratorium.
Basin 41D	All drainages upstream of the Big Hole Battlefield from April through October.
Basin 40T	Jule, Divide and Wild Creeks upstream from the last place they either exit or form the Glacier Park boundary. All other streams and lakes within Glacier Park.
Basin 76I	Rubideau Creek upstream from the last place they either exit or form the Glacier Park boundary. All other streams and lakes within Glacier Park.
Basins 41L 41M	All streams and lakes within Glacier Park.
Basin 41F	Black Bear Canyon, Duck, Cougar, and Grayling Creeks within and upstream from the Yellowstone Park boundary.
Basin 41H	Bacon Rind, Black Butte, Daly, Fan, Snowslide, Specimen, and Wickiup Creeks within and upstream from the Yellowstone Park boundary.
Basin 43B	Blacktail Deer, Buffalo, Cottonwood, Coyote, Hellroaring, Landslide, Little Cottonwood, Mol Heron, Pebble, Stephens, and Upper Reese Creeks, and Gardner River within and upstream from the Yellowstone Park boundary.

2. Initial Processing. Whenever a late claim is received, the initial processing steps described below should be

done in a **timely manner** to ensure the claim is complete and to prepare it for input into the department's records.

Stamp the date received in the upper right corner of the claim form and circle it with a yellow highlighter. Call the records section to obtain a claim number and to record the claim on their log. Enter the claim on a regional office log. This can be the computer index of claims for the basin in decree or being examined, a regional office microcomputer log, or a manually maintained log in the regional office basin file. Place the late claim in a labeled file folder.

Place the following items in the upper left corner of the form. See Figure XI-3.

- claim number
- basin number
- climatic area code (irrigation claims only)
- county code for the POD
- water court division code
- transmittal number
- filing fee collected (example, FF=\$40)
- processing fee collected (example, PF=\$150)

If the late claim is in a decreed basin, **immediately** send written notification of the late claim directly to the water court on regional office stationery. See Figure XI-4 for format and contents of late claim notification memorandum. Place a copy of the memo in the claim file. Add the following remark to note the claim as being filed late.

Example: L5 LC51CLAIM FILED LATE MM/DD/YY. IN 1992 THE MONTANA SUPREME COURT HELD THAT THE FAILURE TO FILE A WATER RIGHT BY APRIL 30, 1982 RESULTED IN THE FORFEITURE OF THE RIGHT. THE 1993 MONTANA LEGISLATURE PROVIDED FOR THE CONDITIONAL REMISSION OF THAT FORFEITURE. THIS CLAIM WILL BE PROCESSED IN ACCORDANCE WITH THE 1993 LEGISLATURE. SEE MONTANA CODE ANNOTATED SECTIONS 85-2-213, 85-2-221 AND 85-2-225. OBJECTIONS MAY BE FILED ON ALL ELEMENTS OF THIS CLAIM.

If the late claim is filed by a state agency and the processing fee is missing, add the following issue remark to each claim.

Example: F35 FI51PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$150.00.

If a late claim is filed in a basin which is closed pursuant to a reserved water right compact, add the following issue remark to the claim.

Example: L10 LC51THIS LATE CLAIM IS IN A DRAINAGE WHICH MAY BE CLOSED TO FURTHER APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE LEGISLATURE PRIOR TO JULY 1, 1993.

Figure XI-4
LATE CLAIM NOTIFICATION MEMO
(Regional Office Letterhead)

MEMORANDUM

TO: Montana Water Court

FROM: Charley Carpenter, Water Resources Specialist

DATE: August 24, 1987

SUBJECT: Late Claim Notification - Basin 43F

A late claim has been filed in decreed Basin 43F. The following information is being provided per Water Right Claim Examination Rule 6.V.(4):

Claim Number: W325800

Date Received: June 31, 1987

Owner: Clara Barnloft
P.O. Box 2105
Cody, Wyoming 82414

Source: Dry Creek

The claim is presently being examined, filmed, and entered into the computer records. When processing is complete, the claim file along with a decree abstract will be forwarded to the Water Court.

CC/kb

Deposit Of Fees. When completing the electronic transmittal, also complete the "Remarks" area (see Exhibit XI-2). This will notify Centralized Services Division staff into which account to place the deposited money. Filing fees go into one account and processing fee goes into another account.

Clarification. For a late claim received in a basin where examination has not started, complete a Late Claim Clarification Form (Exhibit XI-3). Clarification of a late claim in these basins is important for an accurate computer record as it may be several years before the claim is examined.

Without getting into claim examination, clarify the claim to ensure the claim is complete and clear. Use the clarification form to document any changes. DO NOT clarify information on the claim form. If the claimed intent, documentation, or map is not clear, contact the claimant. Specific clarification procedures are outlined in "Examination Materials and Procedures: Clarification."

3. Post-Initial Processing. After the initial processing has been completed, arrange the claim file in the order it is to be filmed.

a. Claim Received In A Basin Where Examination Has Not Started. Send the file to the records section with instructions to film, enter claimed information into the computer and file claim at Records Management. Further processing will be performed when the basin is examined.

b. Claim Received During Basin Examination. Send the file to the records section with instructions to film, enter claimed information into the computer and return file with an examination worksheet. The claim will be examined with the rest of the basin claims.

If issuance of the summary report or decree is imminent, send the file to the program manager. The claim will be placed on the "fast track" for processing so it hopefully can be included in the summary report or decree.

c. Claim Received In A Summary Report Basin Or Decreed Basin. Send the file to the program manager. The claim will be placed on the "fast track" for processing. The claim will be filmed, entered into the computer and returned to the regional office along with an examination worksheet.

4. Examining Late Claims. As of July 1, 1993, all late claims are afforded a conditional remission of forfeiture, and therefore, will be examined.

a. Claim In Basin Currently Being Examined. If a late claim is in a basin currently being examined, examination will be performed using the policies and procedures pertinent to each element as outlined in this manual.

b. Claim In A Summary Report Basin. If the late claim is in a summary report basin, examine the claim using the policies and procedures pertinent to each element as outlined in this manual.

When examination of the late claim affects other claims in the summary report (e.g. late claim creates a decreed exceeded situation), make the necessary corrections on the review abstracts for those claims.

Upon completion of examination, send the complete claim file (and review abstracts of other claims) to the program manager. The program manager will be responsible for the following:

- input the examination data
- run standards
- prepare a summary report abstract
- microfilm the examination worksheet and any other documents
- send memo and summary report abstract to the water court
- return file and any other documents to regional office

c. Late Claim In A Decreed Basin. If the late claim is in a decreed basin, examine the claim using the policies and procedures pertinent to each element as outlined in this manual.

Add the following general information remark to the claim.

Example: G35 GI51CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED 05/07/85.

When examination of a late claim affects other claims in the basin (e.g. late claim creates a decreed exceeded situation), follow standard processing procedures for the late claim. However, changes or correction to the other affected claims should not be made. This issue should be discussed in a memorandum to the water court. The memorandum should explain the situation, identify the other affected claim numbers, and discuss any proposed changes or remarks which should be addressed.

Upon completion of examination, prepare a memorandum to the water court. See Figure XI-5. Send the memorandum and the complete claim file to the program manager.

The program manager will be responsible for the following:

- input the examination data
- run standards
- prepare a decree abstract
- microfilm the examination worksheet and any other documents
- change the processing status to note the claim is at the water court
- send the complete file to the water court
- add necessary remarks to other affected claims

FIGURE XI-5

LATE CLAIM PROCESSING MEMO
(Regional Office Letterhead)

MEMORANDUM

TO: Montana State Water Court
FROM: Rusty Taylor, Water Resources Specialist
DATE: August 31, 1994
RE: Late Claim No. 41H W214451-00 (Schweitzer)

The enclosed late claim, received August 24, 1994, was not included in the Gallatin River Temporary Preliminary Decree (Basin 41K) issued December 26, 1985.

The claim has been clarified, examined, microfilmed, and entered into the main DNRC computer.

[Add a paragraph whether this claim affects other decreed claims. See below for example wording.]

A decree abstract is enclosed for your review. If you have any questions, please feel free to call.

Enclosure

[It appears this claim has no issues relating to other decreed claims in this basin.

OR

Please note this late claim is involved in a decree exceeded/supplemental rights/multiple use situation with other claims on Trout Creek. Those claims are:

W049571-00	W090248-00	W090249-00
W103155-00	W110678-00	W127900-00
W128194-00	W132431-00	

Because these claims are in a decreed basin, the decree exceeded/supplemental rights/multiple use remark associated with these claims has not been modified to include this late claim.]

D. TRANSFERS

The Water Right Transfer Certificate (Form No. 608), commonly referred to simply as a 'transfer,' is the mechanism used to update the department's water right ownership records when a change in ownership has occurred based on §§85-2-421 through 426, MCA.

Administrative Policy No. 14, "Water Right Transfer Certificate (Form No. 608) Processing Policy" revised 1993, contains the general procedures for processing transfers. Transfers are categorized as total transfers or split transfers.

1. Processing Claims With Transfers.

a. Total Transfer (100%). These are transfers where the entire water right changes ownership intact without any division of the right.

- The name and address of the new owner will be listed on the examination worksheet and the decree abstract as the owner of the right. The name and address of past owners should not appear on the worksheet or the decree abstract. The only exception is where a contract for deed is involved. In this case, the seller is retained as an owner.
- The name and address of the owner who filed the original claim is retained in the computer record. It will not appear on the decree abstract, and should not be on the examination worksheet.
- Intermediate owners that have previously filed transfers can be found in the claim file. They are not retained in the computer record for the right and should not appear on the examination worksheet.
- The following remark will be added by the records section. It will appear on the acknowledgement of water right transfer in the claim file and on the examination worksheets generated after the transfer was received. If not, add it.

Example: T25 TR01NOTICE OF WATER RIGHT TRANSFER RECEIVED MM/DD/YY.

If the transfer indicates a contract for deed situation, the seller remains on record along with the new owner and the following remark is also added.

Example: O3 OW01OWNER EDGAR RETAINED. CONTRACT FOR DEED INTEREST.

b. Split (or Proportional) Transfer. These are transfers where the original right is divided between more than one owner as separately owned rights.

Claims will not be split until after the final decree has been issued. All present owners will be listed on the examination worksheet and decree abstract. The same procedures described above for total transfers apply to the original and intermediate owners. The following remarks will be used to identify a transfer has split a water right.

Examples: T25 TR01NOTICE OF WATER RIGHT TRANSFER RECEIVED MM/DD/YY.

03 OW01OWNER EDGAR RETAINED. CONTRACT FOR DEED INTEREST.
(Note: use this remark for W, O and U claims)

05 OW01TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER
RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER
FINAL DECREE.
(Note: use this remark for W, O and U claims)

2. Notification Procedures. Owners of transferred water rights will be notified by the department using the following procedures.

Predecree. When a transfer is received in a basin where the water court has not issued a decree, the records section sends transfer notification using an acknowledgement abstract (Figure XI-6) as follows.

- The seller is informed via an acknowledgement abstract.
- All owners are informed via an acknowledgement abstract.
- The file gets a copy of the acknowledgement abstract.
- Microfiche showing updated ownership are sent to the regional office, based on county.

Postdecree. When a transfer is received in a basin where the water court has issued a temporary preliminary, preliminary or final decree, the records section sends transfer notification using an acknowledgement abstract (Figure XI-7) as follows.

- The seller is informed via an acknowledgement abstract.
- All owners are informed via an acknowledgement abstract. A notice of availability or notice of objection is also included with the acknowledgement for claims in decreed basins during the objection or notice of intent to appear period.
- The file gets a copy of the acknowledgement abstract.

04/05/89

FIGURE XI-6

ACKNOWLEDGEMENT OF WATER RIGHT TRANSFER
FROM
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

WATER RIGHT NUMBER 42L -W-033612-00

WE HAVE RECEIVED AND RECORDED A TRANSFER OF WATER RIGHT OWNERSHIP IN WHICH
YOU WERE NAMED AS A PARTY. THE RECORDS MAINTAINED BY THE WATER RIGHTS
BUREAU HAVE BEEN CHANGED TO REFLECT THE NEW OWNERSHIP ACCORDING TO THE
WATER RIGHT TRANSFER. THE ABSTRACT BELOW SHOWS THE CURRENT WATER RIGHT
INFORMATION. BOTH BUYER AND SELLER HAVE BEEN SENT THIS ACKNOWLEDGEMENT.

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR LOCAL WATER RESOURCES REGIONAL
OFFICE. GLASGOW REGIONAL OFFICE, 228-2561.

OWNERS: PINERIDGE RANCH
STAR ROUTE
PLEVNA MT 59344

PRIORITY DATE: JUNE 4, 1981 8:31 AM

FLOW RATE: 5.00 GPM

VOLUME: 1.70 ACRE FEET PER YEAR (AF)

SOURCE: WELL

PURPOSE:
USE FLOW VOLUME (AF) ACRES PERIOD OF USE
STOCK 5.00 G 1.70 JAN 1 TO DEC 31

POINTS OF DIVERSION AND MEANS OF DIVERSION:

<u>DIVERSION:</u>							
LOT	BLK	QTR	SEC	TWP	RGE	COUNTY	MEANS
		NESWNE	12	36N	50E	DANIELS	WELL

<u>PLACE OF USE FOR STOCK:</u>									
	ACRES	LOT	BLK	QTR	SEC	SEC	TWP	RGE	COUNTY
001					NESWNE	12	36N	50E	DANIELS

**TRANSFER OF OWNERSHIP:
UPON A CHANGE IN OWNERSHIP OF ALL OR ANY PORTION OF THIS CLAIM, THE
PARTIES TO THE TRANSFER SHALL FILE WITH THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION A WATER RIGHT TRANSFER CERTIFICATE, FORM
608, PURSUANT TO SECTION 85-2-424,MCA.

REMARKS: NOTICE OF TRANSFER RECEIVED 12/13/88.

FIGURE XI-7

04/05/89

ACKNOWLEDGEMENT OF WATER RIGHT TRANSFER
FROM
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

WATER RIGHT NUMBER 40G -W127907-00

WE HAVE RECEIVED AND RECORDED A TRANSFER OF WATER RIGHT OWNERSHIP IN WHICH YOU WERE NAMED AS A PARTY. THE RECORDS MAINTAINED BY THE WATER RIGHTS BUREAU HAVE BEEN CHANGED TO REFLECT THE NEW OWNERSHIP ACCORDING TO THE WATER RIGHT TRANSFER. THE ABSTRACT BELOW SHOWS THE CURRENT WATER RIGHT INFORMATION. BOTH BUYER AND SELLER HAVE BEEN SENT THIS ACKNOWLEDGEMENT.

PLEASE NOTE THAT THIS WATER RIGHT IS IN A TEMPORARY PRELIMINARY OR PRELIMINARY DECREE ISSUED BY THE MONTANA WATER COURT. THE NEW OWNER MAY WISH TO DETERMINE THE STATUS OF THIS RIGHT IN THE ONGOING ADJUDICATION BY THE MONTANA WATER COURT.

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR LOCAL WATER RESOURCES REGIONAL OFFICE. HAVRE REGIONAL OFFICE, 262-5516

OWNERS:

JENSEN	HAROLD		
HILL RT			
CHESTER		MT	59522
JENSEN	KATHRYN		
HILL RT			
CHESTER		MT	59522
<u>PRIORITY DATE:</u>	OCT 31, 1961		

FLOW RATE:VOLUME:SOURCE: STRATTON CREEKPURPOSE:

USE	FLOW	VOLUME (AF)	ACRES	PERIOD OF USE
STOCK				JAN 1 TO DEC 31

POINTS OF DIVERSION AND MEANS OF DIVERSION:DIVERSION:

LOT	BLK	QTR SEC	SEC	TWP	RGE	COUNTY	MEANS
		NESWNE	27	37N	05E	LIBERTY	DAM

RESERVOIR

	QTR SEC	SEC	TWP	RGE
ONSTREAM	NESWNE	27	37N	05E

PLACE OF USE FOR STOCK

ACRES	LOT	BLK	QTR SEC	SEC	TWP	RGE	COUNTY
001			NESWNE	27	37N	05E	LIBERTY

**TRANSFER OF OWNERSHIP:

UPON A CHANGE IN OWNERSHIP OF ALL OR ANY PORTION OF THIS CLAIM, THE PARTIES TO THE TRANSFER SHALL FILE WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION A WATER RIGHT TRANSFER CERTIFICATE, FORM 608, PURSUANT TO 45SECTION 85-2-424, MCA.

REMARKS: NOTICE OF TRANSFER RECEIVED 7/24/87.

- Microfiche showing updated ownership are sent to the regional office, based on county.

3. New Owner Determined But File Lacks Transfer Certificate. If a change of ownership has occurred and no transfer form (608) has been filed, try to get a transfer filed by either the former owner or new owner.

Important - until a transfer has been properly filed, instructions or amendments from new owners should not be used to alter a claim. Accept and document information by the new owner, but do not incorporate it until the transfer is received.

If a transfer certificate is not received and the new owner owns 100% of the right, add the following remark to the claim file.

Example: 050 OW51AS OF MM/DD/YY, THIS WATER RIGHT APPEARS TO BE OWNED BY JOHN L. AND JANE W. DOE, 5793 BOXWOOD DR, BOZEMAN, MT 59715.

4. Extended Claim Identification Numbers. As water rights involving proportional transfer will not be split until after final decree, the extended ID number for claims being examined should be 00. However, some claims with proportional transfers may have already been split in the computer data base, and have an extended ID number greater than 00. These types of proportional claims should be recombined. Send all claims for which splits have been made, to the records section for recombination.

Claims with proportional transfers are split on the flow chart in the claim file. The extended ID number from the flow chart may be referred to for purposes of further transfers, either split or whole.

E. TERMINATION OF A CLAIM

A terminated claim is one withdrawn from the decree process by the claimant. A terminated claim's ID number will have an "O" prefix. It will be acknowledged in the decree with a statement noting it was withdrawn from the adjudication process.

Claimants have withdrawn claims for numerous reasons. The most common is that the claim represents an intent to develop water in the future.

1. Request To Withdraw Claim. The request must be in writing, dated, and contain the notarized signatures of all current owners of the right as listed in the department records. The request may also contain the reason(s) for the withdrawal. This information may be in letter or affidavit form. It is preferred that the water court form be used. See Figure XI-8, "Request to Withdraw Statement of Claim." If there are deficiencies, contact the claimant.

When a new owner not listed in the department records requests to terminate one or more claims and retain other water rights, a Form 608, Notice of Transfer, must be completed. However, if the new owner has only claims and requests to withdraw all of them, an amendment form can be completed in lieu of a Form 608. No fee is required. A copy of the deed showing ownership must be attached to the amendment. The amendment and deed should be attached to the withdrawal request.

2. Processing Withdrawn Claims.

a. Withdrawals Received Before Or During Basin Examination. Requests to withdraw claims received prior to or during basin examination will be checked for completeness as required above. Complete the following steps.

- Stamp the withdrawal request with the date of receipt.
- Change the ID number prefix on the examination worksheet from "W" to "O" (or "Z" to "J") and add the following remark to the decree abstract (claim ID on code sheet must also be an "O"). The date in the remark will be when the request was received by the department.

Example: T5 TC01THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON MM/DD/YY.

- When claims have been withdrawn because of duplication or replaced by another water right, also add the following remark to the decree abstract to clarify the termination.

Examples: G24 GI01THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AS IT WAS DUPLICATED BY WATER RIGHT NO. W000000-00.

FIGURE XI-8

REQUEST TO WITHDRAW STATEMENT OF CLAIM

STATE OF MONTANA

County of _____

I, _____

hereby request the withdrawal of my Statement of Claim, number

_____.

The reason for this request is:

_____ I have an existing right which is exempt from filing.

_____ This claim was for a use of water after July 1, 1973.

_____ I have no existing water right to claim.

_____ Other:

Signature date

Signature date

Subscribed and sworn before me this ____ day of _____, 19__.

Notary Seal

Residing at _____

My commission expires _____

G25 GI01THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AND REPLACED BY WATER RIGHT NO. C000000-00.

- All unnecessary remarks; remarks relating to other claims (MU, SR); and remarks defining empty fields (FR01RUNOFF) should be deleted. Those remarks which should be retained are: TC, GI, CT, TR, OW, LC, MS, RM and ST.

Withdrawals received during basin examination should normally be retained and sent to the records section along with other examination materials when a batch is to be coded, filmed, and keypunched.

For withdrawals received before basin examination, send the withdrawal and all attachments to the records section with a short note indicating the claim should be terminated, and the materials microfilmed and stored in the claim file.

b. Withdrawals Received After Basin Examination And Before A Decree. It must be determined whether the request to withdraw can be processed without delaying the issuance of the decree. Contact the program manager.

- If there is time, process the request as in section 2.a. above.
- If time is too short to get the termination into the decree, process the request as in 2.c. below.

c. Withdrawals Received After A Decree Is Issued. If a claim is withdrawn which is in a temporary preliminary or preliminary decree, immediately send written notification of the withdrawal request to the water court on regional office stationary. Request authorization to terminate the claim and enclose a copy of the withdrawal request. See Section XIII.E. for format of the notification to the water court. Route the memo through the Helena central office for review. After response from the court, send the claim to the program manager to be processed.

If a claim is withdrawn after final decree, send the original of the request to the program manager. It would be useful if the withdrawal form were accompanied by a short memorandum (directed to the file) explaining why the claim has been withdrawn, along with any other supporting data. The claim will be terminated, and the documentation microfilmed and stored with the claim file.

3. Previously Terminated Claims. Withdrawal procedures varied from 1979 to the present. Prior to June 29, 1982, some claims were terminated by the department because they were grossly incomplete, were filed on incorrect forms, or lacked the required filing fees. After a June 29, 1982 letter from the water court, no claims were terminated without the claimant's written authorization.

Many of the previously terminated claims were not entered into the computer data base. These will be given ID numbers and reinstated in the system. Worksheets will be generated and the files will be integrated into the respective basin. The terminated claims will be examined with the rest of the basin.

a. Determining Valid Terminations. The first step in examining a terminated claim is to determine if it was properly withdrawn. Requests meeting the following signature requirements are considered proper and can be examined as such. Additionally, requests must clearly indicate which claim is being withdrawn and must clearly indicate withdrawal.

- Prior to 3/30/83, the signatures of all current owners was required. The signatures did not need to be notarized.
- After 3/30/83, the notarized signatures of all current owners were required.
- Federal Agency Claims. A notarized signature is required for a withdrawal request submitted after 7/15/87. Prior to 7/15/87 a request to withdraw a claim by a federal agency should be notarized but will be considered valid if not notarized.

b. Processing Properly Terminated Claims. To process properly withdrawn claims, see section 2.a. above.

c. Processing Improperly Terminated Claims. For any claim found to have been terminated without meeting the requirements noted above, contact the claimant.

- If the claimant wishes to withdraw the claim, this may be done using the current procedure (see section E.1. above).
- If the claimant does not wish to withdraw the claim or cannot be contacted, the claim is not considered terminated. Change the ID prefix to "W". The claim will be examined as a normal claim using the relevant procedures for each element of the water right, e.g. purpose.

4. Decree Abstract Format. Terminated claims (those with an "O" prefix) will be printed in the decrees. An example of a terminated claim decree abstract is shown as Figure XI-9.

The decree abstract will look like other decreed rights but will have blank fields for priority date, flow rate, volume, maximum acres, period of use, and parcel acres. The computer will suppress all remarks except for the TC remark and any general information (GI) remarks.

Examples: TC01THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS
AT THE REQUEST OF THE CLAIMANT ON MM/DD/YY.

TEMPORARY PRELIMINARY DECREE
BOULDER RIVER TRIBUTARY OF JEFFERSON RIVER
BASIN 41E
ABSTRACT OF WATER RIGHT CLAIM

WATER RIGHT NUMBER 41E-0-101223-00

**** THIS WATER RIGHT CLAIM HAS BEEN TERMINATED ****

OWNERS: SCHMANSKY RANCH CO
P.O. BOX 9999
FLOODPLAIN MT 59000

PURPOSE (USE): IRRIGATION

SOURCE: SHORT CREEK

PRIORITY DATE:

FLOW RATE:

VOLUME:

MAXIMUM ACRES:

PERIOD OF USE:

POINT OF DIVERSION AND MEANS OF DIVERSION:

	LOT	BLK	QTR	SEC	SEC	TWP	RGE	COUNTY	MEANS
01				NWSEW	05	06N	07W	JEFFERSON	HEADGATE

PLACE OF USE FOR IRRIGATION:

REMARKS:

THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AS IT WAS
DUPLICATED BY CLAIM NO. W000000-00.

THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS
AT THE REQUEST OF THE CLAIMANT ON 09/21/82.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN YOUR NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY. UNLESS OBJECTED TO OR CALLED IN ON MOTION OF THE MONTANA WATER COURT IN THIS DECREE OR IN THE PRELIMINARY DECREE, THE ELEMENTS OF THIS CLAIMED WATER RIGHT WILL APPEAR IN THE FINAL DECREE AS SHOWN ON THIS ABSTRACT. (SEE SECTION 85-2-233, MONTANA CODE ANNOTATED.)

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN YOUR NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY. IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 879, BOZEMAN, MT 59771-0879.

GI01CLAIM NO. W000000-00 HAS BEEN WITHDRAWN AND REPLACED
BY CERTIFICATE NO. C999999-00.

5. Reinstatement Of Terminated Claim. Any time a request to reinstate a terminated claim is made, contact the water court. Prepare a memorandum (Figure XI-10) stating the reason for the request. Route the memo and complete claim file (including the "Request to Withdraw Statement of Claim" form and the claimants request to reinstate the claim) through the Helena central office for review.

If the water court authorizes the department to reinstate the claim, send the authorization and entire claim file to the records section supervisor with instructions to reinstate the claim and to either file the claim or return it to the regional office with an examination worksheet.

FIGURE XI-10

MEMORANDUM

TO: Montana Water Court

FROM: Marty Van Cleave, Water Resource Specialist

DATE: October 16, 1990

SUBJECT: Reinstatement of Claim No. 43D-W005255-00 requested
by C. Scott Holden

The above referenced claim was filed with the Department on January 10, 1982 by C. Scott Holden. On February 5, 1989 Mr. Holden signed a request to withdraw this claim, indicating he had no existing water right. On October 2, 1990, this office received a letter from Mr. Holden stating he would like to have the claim reinstated.

Enclosed is the complete file which includes the "Request to Withdraw Statement of Claim", and the letter from Mr. Holden.

Please notify this office if this claim can be reinstated. Thank you for your attention to this matter. If you need any additional information, please let me know.

Enclosures

F. CHANGE IN APPROPRIATION RIGHT

A change in appropriation right based on §85-2-402, MCA, is a change in the point diversion, place of use, purpose of use, or place of storage of a water right. This section briefly covers the processing of an Application for Change of Appropriation Water Right, Form 606 and discusses problems relating to examining the claim underlying a change. Changes can present a number of issues and complications for proper examination.

When a change in an appropriation right also involved a change in ownership, an Application to Sever or Sell Appropriation Water Right, Form 609 at one time was required. In September, 1986, the department discontinued using this form. Even though this form is no longer used, the procedures outlined in this section apply to both Form 606 and Form 609.

Ideally, the claim should reflect the water right as it existed prior to July 1, 1973. A separate change application file and computer record would reflect the change information. The two records should be clearly reference each other. The pre-1973 right will be examined, decreed, and subject to objections on its own merit. After the final decree, processing action will be taken concerning the change.

1. Processing Change Applications (Form 606).
Applications to change water rights (i.e., permit, certificate, claim, Powder River declaration, exempt right) are processed by the new appropriations staff. When an application for change is received in a basin currently being examined, the new appropriations staff will complete a flag for each claim involved and give it to the adjudication staff to be placed in the claim file. The flag will indicate that a change application has been received and is being processed. The purpose of the flag is to alert the examiner that a change application exists as the examination worksheet may have been printed prior to the application being received and thus may not have a change text (CT) remark.

When the change file is sent to Helena to be entered into the centralized records system, a CT remark will be added to the water right by the Helena central office staff. CT remarks have several possible formats to show the progress of a change application. See Figure XI-11. As the status of an application is altered (i.e., change received vs. change authorized vs. change completed vs. change revoked), the CT remark will be updated accordingly by the Helena central office staff.

If a change file or change target is in the claim folder and the worksheet does not reflect the CT remark, the records staff may be notified to request an updated worksheet. If an updated worksheet is not requested, make note of the change application on the old worksheet as a reminder to check the review abstract for proper CT remark.

FIGURE XI-11

CHANGE TEXT REMARKS

These remarks are added to the computer record of the water rights being changed (i.e., permit, certificate, claim, Powder River decree or exempt right) and the "G" record to identify the current status of an application or authorization to change. The change is referenced using a "CT", "MS", and/or "OW" remark code. Only "CT" and "OW" codes will be printed on the decree abstract of a claim.

WATER RIGHT RECORD REMARKS

1. Application received

CA01 CT01APPLICATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE RECEIVED MM/DD/YY. SEE G(W)084730-00.

2. Authorization issued

CA03 CT01AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE ISSUED MM/DD/YY. NOTICE OF COMPLETION DUE MM/DD/YY. SEE G(W)034572-00.

CA04 CT01AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION (16 GPM UP TO 12 ACRE-FEET) ISSUED MM/DD/YY. NOTICE OF COMPLETION DUE MM/DD/YY.

3. Completed authorizations

CA07 CT01AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE COMPLETED MM/DD/YY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE G(W)028371-00.

CA09 CT01AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION (16 GPM UP TO 12 ACRE-FEET) COMPLETED MM/DD/YY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

When a sever/sell application is involved, a CT and OW remark are required.

(For total ownership change)
C95 CT01AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE COMPLETED MM/DD/YY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

FIGURE XI-11 (cont.)

O20 OW01SEVER/SELL RECEIVED MM/DD/YY PROCESSED TO CHANGE OWNERS.

(For proportional changes)

C100 CT01AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION, 16 GPM UP TO 12 ACRE-FEET, COMPLETED MM/DD/YY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

O15 OW01SEVER/SELL RECEIVED MM/DD/YY PROCESSED TO ADD OWNERS. WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

4. Replacement well

CA11 CT01REPLACEMENT WELL - AUTHORIZATION TO CHANGE ISSUED MM/DD/YY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

CA13 CT01REPLACEMENT WELL - AUTHORIZATION TO CHANGE A PORTION 16 GPM UP TO 12 ACRE-FEET, ISSUED MM/DD/YY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

5. Authorization revoked/terminated

M5 MS01AUTHORIZATION TO CHANGE ISSUED MM/DD/YY; REVOKED/TERMINATED MM/DD/YY. SEE T070116-00.

6. Application terminated/denied

M6 MS01APPLICATION TO CHANGE RECEIVED MM/DD/YY; TERMINATED/DENIED MM/DD/YY. SEE T073202-00/N123204-00.

"G" RECORD REMARKS

1. Replacement wells

CT01REPLACEMENT WELL.

2. Multiple right changes

CT01APPLICATION FOR CHANGE ALSO APPLIES TO 99X-W888888, 99X-W777777, 99X-W666666. (Lists all rights.)

Change applications are given a "G" identification code. The number assigned to the application will be the same number as the water right being changed. If multiple water are being changed, the number assigned will be the lowest numbered water right.

Change files are not microfilmed until after the change authorization has been issued. For Authorizations issued on multiple rights, the processing unit will place a flag in all but the "G" fiche referring to the location of the Authorization information.

Revoked authorizations will get a new number assigned to them that does not correspond to the water right. This new terminated ("T") number will contain the information about the revocation. The Authorization information that was under the water right number will be removed and stored under the "T" number. The processing unit will place a flag in the "G" microfiche referring to the new "T" number and where all information on the Revoked Authorization can be found. A flag will also go into each water right if the Authorization applied to multiple rights. Applications terminated before they are authorized will follow the same procedures as those revoked after authorization.

2. Post-'73 Changes To Pre-'73 Rights. These can be divided into two groups: those for which an Application for Change, Form 606, was filed, and those for which a 606 was not filed.

a. Post-'73 Changes For Which No 606 Was Filed. These instances will only be identified through pertinent issue remarks as each claim in the basin is examined. Sometimes documentation will indicate a post-June 30, 1973 change. Sometimes the aerial photographs will show evidence of a post-June 30, 1973 change.

b. Post-'73 Changes For Which A 606 Was Filed. Many 606s were filed before the related claim was filed. Efforts have been made to match the claim and 606. Because of errors or lack of detailed information in the claim file or change file or both, some 606s may have been matched with the wrong claim. The first step when examining the claim is to double check the 606/claim match.

3. Examining Claims With Changes. When reviewing a claim with an associated change, the status of the change should be denoted with a remark. Check the wording of the remark and, if necessary, change the wording to match the remark formats in Figure XI-10.

Check to see if the application or authorization indicates more than one past use. If more than one past use is indicated, check all claims belonging to the claimant to make sure the change has been properly identified (CT remarks on all associated claims). If certain claims were overlooked, send to the records section, a copy of the change application or authorization along with all related

worksheets and a cover memorandum explaining the situation. Records will correct the computer record and return updated worksheets.

a. Claim Shows The Right As It Was Before 1973 And File Contains A 606. In the past, completed changes have been incorporated into the claim computer record. If the examination worksheet shows the changed data, change the data on the worksheet to show the originally claimed information. Send the worksheet to the records section to be coded and request a new examination worksheet.

Review the claim and the change file. If they are in conflict, contact the claimant. If the correct information requires an amendment to the claim, follow directions under section XI.A., Amendments.

If the change file appears to be in error, document your findings in the claim file. Bring the problem to the attention of the new appropriations staff.

Examine the claim using relevant procedures for a pre-July 1, 1973 purpose as outlined in this manual. Add a change text (CT) remark to appear on the decree abstract. The text of the remark will depend upon the status of the Authorization. See Figure XI-11 for example "CT" remarks.

b. Claim Shows Post-'73 Changes And The File Contains A 606. Contact the claimant. Explain that it was intended for the claim to reflect pre-'73 information and the 606 was to show the post-'73 changes. Request information on the right as it existed before 7/1/73.

If the claimant amends the claim, proceed as in section 2.a. above. If the claimant does not wish to amend the claim to reflect pre-'73 data, two examinations will have to be done.

- Examine the claim as submitted.
- To the extent possible using the information available, determine what the right looked like before 7/1/73.

Add issue remarks to the department's examination report. The remark code and items addressed will vary with the situation. A change text (CT) remark must also appear to identify the status of the Application for Change.

Examples: P340 PL51THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PLACE OF USE WAS IN SEC 06 TWP 01N RGE 17E SWEET GRASS COUNTY.

P80 PD51THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE NENENE SEC 10 TWP 12N RGE 03W LEWIS AND CLARK COUNTY.

**** PU51THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS PRIOR TO JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PURPOSE WAS MINING.

CT01 remark. (See Figure XI-11 for example "CT" remarks)

c. Claim Shows Post-'73 Changes, No 606 In File.

Contact the claimant. Explain that it was intended for the claim to reflect pre-'73 information. Request information on the right as it existed before 7/1/73. Also suggest that New Appropriations staff be contacted to submit an Application for Change.

If the claimant amends the claim to reflect pre-1973 use, proceed with normal claim examination.

If the claimant does not wish to amend the claim to reflect pre-'73 data, two examinations will have to be done.

- Examine the claim as submitted.
- To the extent possible using the information available, determine what the right looked like before 7/1/73.

Add issue remarks to the examination report. The items addressed and the remark code will vary with the situation.

Examples: P345 PL51THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE.

P80 PD51THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE NENENE SEC 10 TWP 12N RGE 03W LEWIS AND CLARK COUNTY.

**** PU51THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PURPOSE WAS MINING.

G. CLAIMS THAT PRESENT SPECIAL ISSUES

Some claims by the nature or size of water use involved may present issues that are beyond the scope of the standard procedures delineated in this manual.

Examples might include the storage facilities on the main stem of the Missouri River (e.g., Canyon Ferry Reservoir), irrigation claims for Hungry Horse Reservoir, major municipalities (e.g., Billings), large hydropower projects (e.g., Cochran Dam), and interstate or international diversions of water. Because these claims may have major affects on basins other than the basin being examined, these will be reviewed by the Program Manager.

Examine the claim to the extent possible. Consult the water resources specialist and regional manager in making the determination whether an individual claim fits in this category. The rule of thumb is that if the claimed appropriation has substantial interbasin water or policy impacts, the claim should be referred to the program manager.

